

**UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND  
(Baltimore)**

<b>In re:</b>	:	<b>Case Nos. 01-52415 -</b>
	:	<b>01-52416 (JS)</b>
<b>FRANK'S NURSERY &amp; CRAFTS, INC., et al.</b>	:	<b>Chapter 11</b>
	:	<b>(Jointly Administered)</b>
<b>Debtors.</b>	:	

**LIMITED OBJECTION BY ENTERPRISE SHOPPING CENTER LLC TO DEBTOR'S  
MOTION FOR ORDER: (a) AUTHORIZING DEBTORS TO CONDUCT CERTAIN  
STORE CLOSING SALES PURSUANT TO SECTIONS 105 AND 363 OF THE  
BANKRUPTCY CODE AND GRANTING ANCILLARY RELIEF RELATED  
THERE TO; (b) AUTHORIZING AND APPROVING RETENTION INCENTIVE  
PROGRAM FOR AFFECTED EMPLOYEES; AND (c) GRANTING RELATED RELIEF**

Enterprise Shopping Center, LLC ("Enterprise"), by counsel, hereby objects to the instant Motion of the Debtors herein. Enterprise's objection is limited to the Debtors' proposed Going-Out-of-Business Sales ("GOB Sales").

In support thereof, Enterprise states:

1. On February 19, 2001 (the "Petition Date"), the Debtors filed a voluntary petition for relief pursuant to Chapter 11, Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code").
2. On or about March 19, 2001, the Debtors filed a Motion related to GOB Sales ("GOB Motion"). Debtors propose to conduct the GOB Sales at numerous stores, including the Lanham, Maryland, Store #253 ("Premises"), under which lease ("Lease") Enterprise is the landlord.
3. The GOB Motion fails to provide critical information regarding the certain terms of the GOB Sales to be conducted, including the scope, duration, information regarding the size and style of the banners and signage the Debtors propose to place on the outside of the Premises, the manner in which the Premises will be vacated and returned to the Landlord, and the like. The Court should only grant the relief requested in the GOB Motion if the Debtors provide several guarantees

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and protections to the affected landlords, including Enterprise, and these protections should be set forth in any Order covering the GOB Sales. The specific requests of Enterprise follow.

4. *Duration and scope of sale:* Given that the Debtors' original proposal was to reject the Lease in the first quarter of 2001, any Order should include language such as: "The Debtors shall be required to seek further authority from the Court in the event that they wish to conduct the GOB Sales beyond 30 days from the entry of this Order." Moreover, the Debtors should not be permitted to transfer inventory from other locations to this specific Premises, so as to prolong the duration of the GOB Sale.

5. *Signage:* The GOB Motion places no limits on signage. Enterprise proposes the following language in any Order: "Debtors may use and place signage and banners according to the terms of the Leases, the present ordinary business practices of the Debtors, inside store windows or as a landlord consents, provided that this is without prejudice to the Debtors' right to seek broader authority for the usage and placement of signage. All banners and signage to be kept in good condition and repair, and safely affixed."

6. *Return of Premises and Removal of FF&E:* The GOB Motion fails to address Debtors' maintenance and repair responsibilities under the Lease, so the following should be required by the Order: "Any removal of FF&E shall be at Debtors' expense and as required by the Lease. Debtors shall, at their expense, promptly repair any damage caused by such removal. At the conclusion of the GOB Sale and surrender of the Premises, same shall be in such condition and repair as in accordance with the terms of the Lease. Moreover, any abandoned property shall be removed at Debtors' expense. All costs incurred or associated with damage or

removal are to be paid by Debtors as Ch. 11 administrative expenses under 11 USC 503(b)(1)(a).”

7. *Protection of Landlords*: The Debtors should be required to escrow a portion of the GOB Sales proceeds until after the Premises have been vacated, surrendered and any damages incurred in the GOB Sales repaired. The Debtors should also be required to timely perform all obligations under the Leases until they are assumed or rejected. (This protects the landlords in case there are not sufficient funds to pay such claims, even if they are granted administrative priority at a later date.) The order should also state that it is without prejudice to the Landlord’s rights under 11 USC 362(d) and 365(d).

### **Conclusion**

Enterprise (and any other affected landlords) should be afforded greater protection than the Debtors propose in the GOB Motion because, as landlords, they are in the unique situation of being required to provide immediate, direct and ongoing benefit for the Debtors to conduct the GOB Sales. Landlords are without the opportunity afforded other creditors to refuse to take the risk of continuing business with the Debtors. As a protection, as well as a deterrent, to encourage the Debtors to protect and preserve the Premises, the protections proposed herein should be adopted as a condition precedent to the approval of the GOB Sales.

WHEREFORE, for the foregoing reasons, Enterprise respectfully requests that this Honorable Court:

A. Deny the GOB Motion unless provisions are added to the Debtors’ proposed Order consistent with the matters raised in this Limited Objection; and

B. Grant such other and further relief as is just and equitable, as may be addressed at the hearing scheduled for March 26, 2001.

Respectfully submitted,

BREGMAN, BERBERT & SCHWARTZ, L.L.C.

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**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on this 23 day of March 2001, a copy of the foregoing was mailed, first class and postage pre-paid, to:

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